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District of Columbia School Reform Proposals: Congress's Possible Role in the Legislative Process

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Summary

On January 5, 2007, the newly elected mayor of the District of Columbia, Adrian Fenty, released his legislative proposal to transfer administrative and budgetary control of the District's public schools from the Board of Education to the Office of the Mayor. Under the proposed Education Reform Act, the city council would reorganize the city's authority over the schools, while calling on Congress to amend provisions of the Home Rule Act relating to the District of Columbia School Board structure and to restrictions on the school budget authority. To the extent that Congress sought to legislate beyond these two issues, it could pass legislation implementing any or all other aspects of the proposed act itself. This report will examine that option.

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On January 5, 2007, Adrian Fenty, the mayor of the District of Columbia, released a detailed legislative proposal that would transfer administrative, policy making, and budgetary authority for the District of Columbia's public schools from the District of Columbia Board of Education to the mayor. The proposal, "The District of Columbia Public Education Reform Amendment Act of 2007"¹ (Education Reform Act), was introduced one day after the mayor was sworn in. Key elements of the proposal would

- create a new cabinet-level department for public school education to be managed by a "Chancellor of the District of Columbia Public Schools," appointed by the mayor with the advice and consent of the city council;
- reduce the authority and power of the Board of Education from an independent governing and policymaking entity to an advisory body to the mayor; and
- transfer the current Board of Education charter-school authority to the State Education Office.²
- transfer the authority to set the budget for the District of Columbia schools to the mayor.

Home Rule Congressional Authority

Congress's authority to review, amend, and approve or disapprove the mayor's education proposal is derived from the "District Clause" of the Constitution, which states that Congress has the power

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States.³

In 1973, Congress passed the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 (Home Rule Act),⁴ which granted the District citizens an elected form of government with limited home rule.⁵ The Home Rule Act gave District voters the right to elect a mayor, a city council, and an independent Board of Education.⁶ It also outlined the powers afforded to the D.C. Council and the retention of Congress's constitutional authority to legislate within the District. This retention of constitutional authority is recognized in the Home Rule Act⁷ and the D.C. Code, which states

§ 1-206.01 **Retention of constitutional authority.** Notwithstanding any other provision of this chapter, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted

¹ On January 5, 2007, City Council Chairman Vincent Gray, by request of the mayor, introduced the District of Columbia Public Education Reform Amendment Act of 2007 (B17-0001), available at <http://www.dccouncil.washington.dc.us/images/00001/20070110123820.pdf>.

² For the purpose of meeting requirements for federal education assistance, the District is defined as a state.

³ Art. 1, Sec. 8, clause 17.

⁴ 87 Stat. 774.

⁵ From 1967 to 1974, the District was governed by a presidentially appointed mayor and council.

⁶ Voters approved by referendum vote the Home Rule Act on May 7, 1974.

⁷ 87 Stat. 813.

to the council by this chapter, including legislation to amend or repeal any law in force in the District prior to or after enactment of this chapter and any act passed by the city council.

The Proposed Education Reform Act

The proposed Education Reform Act contemplates two concurrent avenues for achieving a proposed restructuring of the District of Columbia public school system: (1) passage of legislation by the city council, and (2) congressional amendment of the Home Rule Act. The majority of the reorganization proposal could be implemented by the city council acting under its delegated authority to reorganize agencies of the District of Columbia.⁸ However, the Education Reform Act also contemplates that the Congress would pass legislation amending two provisions of the Home Rule Act: (1) the authorizing language for the D.C. School Board,⁹ and (2) restrictions on the budgetary authority of the city council and mayor over the D.C. schools.¹⁰

To the extent that Congress sought to legislate beyond the two issues contemplated in the proposed Education Reform Act, it could pass legislation implementing any or all other aspects of the proposed act itself. This report does not address the issue of whether that portion of the Education Reform Act which currently contemplates action by Congress to implement could be achieved by the city council acting alone. For a discussion of that question, please see CRS Report RL33912, *District of Columbia School Reform Proposal: Authority of the D.C. Council To Implement*, by Kenneth R. Thomas.

Passage of the Provisions of the Education Reform Act

Instead of seeking passage of the Education Reform Act, the mayor could seek a congressional sponsor to introduce legislation that would amend the city's home rule charter.¹¹ The procedure for such legislation would be as follows.

⁸ See Education Reform Bill, § 102 (citing the D.C. Council's authority under § 404(b) of the Home Rule Act also D.C. Code § 1-204.04(b)). The Home Rule Act provides the Council with significant authority for governmental reorganization. Specifically, § 404(b) provides that:

the Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

⁹ Home Rule Act § 495 also D.C. Code 1-204.95 (providing that the control of the public schools is vested in the D.C. Board of Education).

¹⁰ Home Rule Act § 452 (codified at D.C. Code § 1-204.52) provides that:

With respect to the annual budget for the Board of Education in the District of Columbia, the Mayor and the Council may establish the maximum amount of funds which will be allocated to the Board, but may not specify the purposes for which such funds may be expended or the amount of such funds which may be expended for the various programs under the jurisdiction of the Board of Education. . . .

These provisions would be amended to eliminate this disability. *See* Education Reform Bill at § 202.

¹¹ Should the mayor pursue this option in an effort to expedite the process, he would risk criticism for shortchanging the principle of home rule, since neither District residents nor the District's legislative body, the city council, would have a vote in the final decision. Some observers have commented that such an exclusion of the city council and District voters in deciding the future of a critical public service—public education—might prove awkward for the Fenty administration as it pressed Congress on other home rule issues, such as budget autonomy, voting rights, and the elimination of social riders from the District's appropriations bills.

Table I. Council Passage of Education Reform

Step 1	Introduction of Legislative Proposal. Mayor finds a congressional sponsor who submits a proposal.
Step 2	Congressional Consideration. Congress, through its normal legislative process, considers the proposal, amends the District of Columbia Home Rule Act, and passes the other relevant substantive provisions of the act.
Step 3	Enactment. Bill signed by the President and becomes law.

Congress's Possible Role

A proposal originating in Congress to implement the Education Reform Act would not necessarily result in an expedited process. The controversial nature of the proposal could subject it to the regular legislative process, including hearings, markups, committee reports, House and Senate votes, and a conference agreement. The approved proposal could look significantly different from the proposal introduced on behalf of the mayor.

Congress has initiated efforts to implement education reform previously. In 1995, Congress amended the home rule charter when it passed the District of Columbia School Reform Act, which was included as Title II of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, P.L. 104-134. Title II authorized the creation of public charter schools in the District.¹² In 2004, Congress considered and passed legislation amending the home rule charter when it included the DC School Choice Incentive Act of 2003 in the Consolidated Appropriations Act of 2004, P.L. 108-199. The DC School Choice Incentive Act created the private school voucher program.¹³ It should be noted that both of these programs were included as titles in District of Columbia appropriations acts.

The District's Alternative Charter Amendment Process

Although the city council may possess the authority to substantially reorganize public education in the District on its own, and Congress may also pass legislation without mayoral or city council review or approval, it is worth noting that the District's home rule charter includes provisions that would allow elements of the proposal that would amend the District's home rule charter to be subject to a referendum vote.¹⁴ The Education Reform Act does not contemplate the use of the referendum process to ratify the proposed changes to the home rule charter. During community meetings held throughout the city to explain the proposal, a number of District residents voiced concern that the proposal was not being put to a referendum vote.

Charter Amendment by Referendum

Table 2, Charter Amendment by Referendum, outlines the legislative process to be followed when seeking to amend the Home Rule Act by referendum. This process would require the approval of the city council, ratification by the voters, and congressional review.

¹² 110 Stat. 1321-107.

¹³ 118 Stat. 126.

¹⁴ 87 Stat. 784.

Table 2. Charter Amendment by Referendum

Step 1	Introduction of the Proposal. The mayor's proposal is introduced, by request, by a member of the city council. ¹⁵
Step 2	City Council Consideration. The city council may consider, amend, and pass the bill, or it may reject the proposal.
Step 3	Voter Referendum. If the bill is approved by the council and signed by the mayor, the Board of Elections and Ethics is required to prepare a referendum ballot to be put before the voters of the District. The charter-amending referendum must be approved by a majority of the voting electorate.
Step 4	Certification of Referendum Vote. The results of the referendum must be certified by the Board of Elections and Ethics within 30 days of the referendum. The certification is to be made to the President of the United States, the Secretary of the Senate, and the Clerk of the House of Representatives. The chair of the council is to submit charter amending acts certified by the board to the Speaker of the House and President of the Senate on the day of certification.
Step 5	Congressional Review. Upon receipt of the certification from the Board of Elections and Ethics that the referendum has been approved, Congress has 35 legislative days (days when either House or Senate is in session) or until the date prescribed by the proposed charter amendment to pass a joint resolution of disapproval. The absence of such a resolution may be interpreted as congressional approval of the charter amendment. Alternatively, Congress may waive the congressional review period. ¹⁶

Congress's Possible Role

The mayor's Education Reform Act does not contemplate the use of the referendum process. If the charter amendment by referendum process was used, the Home Rule Act would require city council and voter approval of the proposal and would allow a period for congressional review and consideration. Congress would have four options:

- It could pass a resolution of disapproval within 35 legislative days of the Board of Election and Ethics certifying that the proposed charter amendment had been approved by a majority of the voting electorate. Such a resolution would have the effect of voiding the outcome of the referendum and could be considered by some observers as an affront to home rule, while others could point out that it is within Congress's constitutional authority.
- It might do nothing, allowing the 35 legislative days to pass. By its inaction, Congress would allow the outcome of the referendum to take effect.
- It could pass legislation waiving the 35 legislative days review period, thus expediting the effective date of the charter amendment. Congress passed such a waiver in 2000, after voters approved, by referendum, an amendment to the home rule charter governing the composition of the Board of Education.¹⁷

¹⁵ The bill was introduced by the Chair of the City Council, Vincent Gray, by request of the mayor, and was designated B17-0001.

¹⁶ Congress still may amend or prevent implementation of the charter amendment after the 35-day review period by attaching a provision to the District's annual appropriations act.

¹⁷ The School Governance Charter Amendment Act of 2000, D.C. Law 13-159, was adopted by the city council on February 17, 2000; signed by the mayor on March 1, 2000; and approved by District voters in a referendum ballot on June 27, 2000. The results were certified by the Board of Elections and Ethics on July 7, 2000. Congress waived its 35 legislative days review period when it passed the Congressional Waiver of the School Governance Charter Amendment Act of 2000, P.L. 106-226 (114 Stat. 459), allowing D.C. Law 13-159 to take effect immediately.

- It could use the appropriations process to demonstrate its opposition to measures approved by the city council and the citizens of the District if it were unable to pass a resolution of disapproval during the 35-day congressional review period. For instance, Congress has included in general provisions sections of past District of Columbia appropriation acts language preventing the District from implementing a voter-approved medical marijuana initiative.¹⁸

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¹⁸ 119 Stat. 2521.